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**LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT**

**NOTIFICATION**

**The 25th March 2014**

No. 2785—IR(ID)-09/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated the 30th January 2014 in Industrial Dispute Case No. 04 of 2012 of the Presiding Officer, Labour Court, Sambalpur, wherein the industrial dispute between the Management of M/s Kenjhiriapali Service Co-operative Society Ltd., Dist. Subarnapur and their Workman Tapan Pradhan was filed by the workman under Section 2-A(2) of the I. D. Act, 1947 for adjudication is hereby published as in the Schedule below :

**SCHEDULE**

**IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR**

**INDUSTRIAL DISPUTE CASE NO. 04 OF 2012**

**Dated the 30th January 2014**

***Present :***

Shri Srikanta Mishra, LL.M.,  
Presiding Officer,  
Labour Court,  
Sambalpur.

***Between :***

The Management of  
M/s Kenjhiriapalli Service Co-operative  
Society Ltd., At/P.O. Kenjhiriapali,  
P.S. Birmaharajpur, Dist. Subarnapur.

. . . First Party—Management

**And**

Its Workman  
Tapan Pradhan,  
S/o Madhu Sudan Pradhan,  
Vill./P.O. Kenjhiriapali,  
P.S. Birmaharajpur, Dist. Subarnapur.

. . . Second Party—Workman

*Appearances :*

Shri P. K. Tripathy, Advocate	. . For the First Party—Management
Shri R. N. Debata, Advocate	. . For the Second Party—Workman

**AWARD**

1. This Award arises out of an application under Section 2-A(2) of the Industrial Disputes Act, 1947 filed by one Tapan Pradhan, hereinafter called as workman against M/s Kenjhiriapalli Service Co-operative Society Ltd., hereinafter called as management.

2. The case of the workman in brief is that he was appointed as a Peon by Order, dated the 20th September 1996 issued by the President and Secretary of the management Society on the basis of Resolution, dated the 18th September 1995 and the said appointment was approved by the A.R.C.S., Sonapur vide his Order No. 2445, dated the 10th October 1995. The workman continued service in an unblemished manner but on some unnecessary grudge, the management suspended him from service with effect from the 17th February 2011. He then made a representation before the A.R.C.S., Sonapur, who, by Letter No. 423, dated the 4th March 2011 and Letter No. 605, dated the 4th May 2011 directed the management to reinstate the workman in service and accordingly, the management allowed him to join in service on the 7th May 2011. Subsequently, the management, by Order No. 1, dated the 19th August 2011 dismissed the workman from service by a Registered Post communication which he received on the 26th August 2011. It is the submission of the workman that before terminating his service, the management never issued any show cause notice nor framed any charge against him nor conducted any departmental enquiry in the matter of any allegation against him. His dismissal from service is in violation of the principles of Natural Justice and as such illegal and unjustified. With such averments, the workman prayed for reinstatement in service with full back wages and other service benefits.

3. The management filed objection (written statement) stating *inter alia* that the workman, while applying for the post of Peon under the management, disclosed his qualification to be of 7th Standard but when he joined in service, submitted certificate of Class-V towards his qualification. Such fact could not be verified due to overburden of work but when same was discovered, it was found that the workman does not comply with the qualification required for the post of Peon. The management felt that the above act of the workman amounted to misconduct and indiscipline. In a meeting conducted by the Board of the Management, a Resolution was passed unanimously that the workman should be dismissed from service for lacking in proper qualification required for the post of Peon and therefore, there was no need to ask for any show cause from him. It is alleged in the written statement that the workman was of quarrelsome nature and was disobedient and there was difficulty for the staffs to work with him. With such averments the management submit that the dismissal order against the workman was legal and justified. The management also raised the question of maintainability of the application in this forum and prays for dismissal of the same.

4. In response to the written statement, the workman submitted a rejoinder wherein he alleged that the management did not communicate the resolution passed in the Board meeting of the management to him and has made a false statement in the objection. He further stated that after dismissal from service he raised an industrial dispute before the D.L.O., Subarnapur and thereafter the management by Letter No. 79, dated the 15th February 2012 directed him to furnish original documents which he complied on the 18th February 2012. He denies the allegation that he

ever disclosed his qualification to be of 7th Standard as alleged by the management and refuted the allegations levelled against him. He specifically narrated that one Raghubir Panigrahi, the President of the Society is hostile towards him and on the 21st March 2011 he appointed one Meghanad Pradhan in the post of Peon though fresh recruitment was banned in the Co-operative Societies in the relevant time. In order to accommodate the said man, the President illegally dismissed him from service without obtaining administrative approval for appointment of Shri Pradhan. The workman has further alleged that the management did not pay his regular monthly salary from the 1st April 2011 till the date of dismissal, i.e. the 19th August 2011 but only on the 8th August 2012 paid a sum of Rs. 22,825 to him towards his unpaid salary for the said period.

5. On the basis of the pleadings of the parties, the following issues are settled :—

#### ISSUES

- (i) "Whether the dismissal of Shri Tapan Pradhan, Peon by the management of M/s. Kenjhiriapali Service Co-operative Society Ltd., At/P.O. Kenjhiriapali, P.S. Birmaharajpur, Dist. Subarnapur vide Order No. 1, dated the 19th August 2011 is legal and/or justified ?
- (ii) If not to what reliefs, the workman Shri Tapan Pradhan is entitled."

6. The workman examined himself as the sole witness and proved several documents which are marked Ext. 1 to Ext. 15. On the contrary the management though filed the affidavit evidence of one Rajendra Kumar Pradhan, the Secretary, it failed to produce the witness for examination and cross-examination. Therefore, there is no admissible evidence from the side of the management.

#### FINDINGS

7. *Issue No. (i)*—The workman was cross-examined at length by the management but nothing substantial has been brought out in support of the stand taken by the management. On scrutiny of the oral and documentary evidence led by the workman so also the pleading of the management, it is crystal clear that the workman was appointed as a Peon under the management by Order, dated the 20th September 1996 of the President, Kenjhiriapali Service Co-operative Society Ltd., on the basis of the Board meeting, dated the 18th September 1996. The workman has proved a copy of the appointment order which has been marked as Ext. 1. As per this document, the workman was appointed as Peon on monthly salary of Rs. 850 and as conditions of service, a sum of Rs. 50 per month was to be deducted from his salary as Security and besides that if any mistake in his duty is detected, he would be removed from service at anytime. During course of his evidence, the workman has proved a copy of his application, dated the 20th July 1996 for appointing him in the post of Peon under the management and the said document has been marked as Ext. 12 without any objection. In this application, the workman disclosed that his qualification is 5th Standard and he is able to perform the duty of permanent Peon. In the application, it has been specifically mentioned that the father of the workman namely Madhu Sudan Pradhan applied for voluntary retirement and the workman wanted to be appointment in his place. The workman has also proved a copy of Order of Approval, dated the 10th October 1996 of his service issued by the Assistant Registrar, Co-operative Societies, Sonapur which has been marked as Ext. 2. As per this document the appointment of the workman by Resolution No. 2, dated the 19th September 1996 of the Board of Management in place of his father on rehabilitation as per conditions fixed by the Board in its resolution with a consolidated Pay Scale of Rs. 850 was approved by the A.R.C.S., Sonapur Circle. Therefore, the

management knowing the fact that the workman was having qualification of 5th Standard was appointed in service permanently as a Peon. In such circumstances the present stand of the management that the workman was not having the requisite qualification for the post of Peon cannot be taken into consideration. The dismissal of the workman on the ground of less qualification cannot stand good in view of the appointment on the basis of the original application of the workman wherein he clearly disclosed his qualification as 5th Standard.

8. Admittedly, the workman was suspended from service with effect from the 17th February 2011. He has filed a copy of Suspension Order issued by the President of the management namely Shri Raghubir Panigrahi vide Letter No. 1, dated the 17th February 2011 which has been marked as Ext. 4. In this document it is specifically mentioned that the Suspension Order was passed on the basis of Order/Letter No. 218, dated the 15th February 2011 of the Assistant Registrar of Co-operative Societies. The workman has filed a copy of the said Letter No. 218, dated the 13th February 2011 which has been marked as Ext. 3. In this document the A.R.C.S. directed the President of the Management Society to place the workman Shri Pradhan under suspension for the greater interest of the Society. In the Letter, it was specified that the workman (Peon of the Society) is not acting for the benefit of the Society. It is not known as to which of the conduct of the workman was taken into consideration by the A.R.C.S., Sonapur to form his opinion that he was not acting for the benefit of the Society. The management is also silent in its written statement regarding the specific misconduct, if any, on the part of the workman in discharging his duty as Peon which was not for the benefit of the Society or not in the interest of the Society. Therefore, the Suspension Order issued against the workman both by the A.R.C.S. and the President of the management are found to be without any basis. It reveals from the evidence on record that soon after the Suspension Order, the workman made a representation before the A.R.C.S., Sonapur Circle which was duly considered by the latter. A copy of the representation, dated the 25th February 2011 of the workman has been marked as Ext. 5. In this representation the workman specified that during his tenure of service, he has never neglected in his duty nor committed any act of indiscipline. He always worked in the interest of the Society but without any reason and without any show cause he has been suspended from service. He requested for revocation of the Order of Suspension. The workman has proved a copy of Memo. No. 424, dated the 4th March 2011 issued by the A.R.C.S. to the President of the Management Society which has been marked as Ext. 6. As per this document, the A.R.C.S. on consideration of the representation of the workman directed immediate reinstatement of the workman pending drawal of draft charges if any, against him with due procedure. It appears that the said order of the A.R.C.S. was not complied by the management and therefore, the A.R.C.S. vide his Letter No. 607, dated the 4th May 2011 again directed the President of the Management Society to reinstate the workman with immediate effect failing which legal action and proceeding might be taken against him. A copy of the said letter has been duly marked as Ext. 7. In view of the direction, dated the 4th May 2011 the workman was reinstated in service. The copy of the joining report duly accepted by the Management Society on the 7th May 2011 has been marked as Ext. 8. It is crystal clear that from the 7th May 2011, the workman continued in service under the management but there was a rider that the management can draw draft charges, if any, against the workman by following due procedure.

9. The workman, during his course of evidence, has proved a copy of letter, dated the 19th August 2011 issued by the President of the Management Society dismissing him from service and the said document has been marked as Ext. 9. On perusal of this document, I find there was a

meeting of the Board of Management on the 18th August 2011 in which it was decided that the workman neglected in his duty and was also lost the confidence of the Society so also acted in an indisciplined manner for which he was removed from service. The management, though was given sufficient opportunities, did not file any document in support of the aforesaid misconduct of the workman during his tenure of service. The order of termination of service does not specify any specific act of negligence, misconduct, indiscipline or conduct doubting upon his confidence. The management has also not filed a copy of resolution allegedly passed against the workman in its Board Meeting. Before removing the workman from service, no show cause was called from him nor any notice was served upon him intimating the proposal of the management to remove him from service. Therefore, the action of the management is arbitrary and it does not comply the principles of natural justice. When the workman has specifically asserted that he did not commit any misconduct and was never indiscipline, it was incumbent upon the management to prove any circumstance indicating any such misconduct of the workman so as to justify their action in terminating his service. It reveals from the written statement of the management that the dismissal of the workman from service was effected when it was discovered that he did not have the requisite qualification to hold the post of Peon. The management took a positive stand that the workman made false representation that he passed 7th Standard though he actually passed 5th Standard and therefore, his removal from service did not require serving any prior notice upon him. While discussing at previous stage, I have already held that the appointment of the workman was made on the basis of his application, dated the 20th March 1996 wherein he clearly disclosed his qualification as 5th Class passed. Being aware of such qualification, the management appointed him on regular basis and therefore after long and continuous service period, the management cannot straightway dismiss him from service and that too without conducting any disciplinary proceeding against him. Besides the management has not filed the copy of rules, if any, specifying the educational qualification required for the post of Peon in its Society during the relevant year, i.e. 1996.

10. On a close scrutiny of the evidence available on record and the discussion made above, I am constrained to hold that the dismissal of the workman Shri Tapan Pradhan, Peon by the management by its Order, dated the 19th August 2011 is illegal and unjustified. The issue is accordingly answered in favour of the workman.

11. *Issue No. (ii)*—Before discussing on the question of relief to the workman, I feel it will be proper to discuss the question of maintainability of the present application which is alleged by the management. It is the stand of the management that the present forum lacks jurisdiction for adjudication of the case between the present parties. It is true that the management is a Co-operative Society governed under the Co-operative Societies Act but in view of the wide scope of definition of workman and industry under the I. D. Act and interpretation of the Hon'ble Apex Court and several High Courts, the Co-operative Societies come under the definition of 'industry' and its Peons and Watchman come under the definition of a 'workman'. The present workman filed an application before the District Labour Officer, Subarnapur praying to take necessary action and pass necessary direction to the management to allow him to continue in the post of Peon alleging that his dismissal from service was illegal. A copy of the said application has been marked as Ext. 10. The District Labour Officer vide Memo. No. 400, dated the 31st January 2012 advised the management to take appropriate action within 15 days time. A copy of the said letter of the D.L.O., Subarnapur has been marked as Ext. 11. The workman raised the industrial dispute on the 15th May 2012 which is well within the stipulated period of removal from his service under the I. D. Act and since the matter was not referred to the Government within 45 days, he was entitled to file the

present petition under Section 2-A(2) of the I. D. Act, 1947. As the management has neither complied the advice of the D.L.O., Subarnapur and has not made any communication to the workman after the industrial dispute was raised, I am of the considered opinion that this Court has jurisdiction to decide the dispute between the parties.

12. So far as the question of relief is concerned, I have already held that the dismissal of the workman from service by Order, dated the 19th August 2011 of the management is illegal and unjustified. He is entitled to reinstatement in service. It might be a fact that someone else has been appointed in the meantime by the Order of the President but the same was not approved by the A.R.C.S. as proved by the workman. The workman cannot suffer for any fresh appointment particularly when he was terminated from service in an illegal and unjustified manner. Since it is not alleged by the management that the workman after being dismissed from service, engaged himself anywhere, he is entitled to full back wages from the date of termination of his service till reinstatement. The issue No. (ii) is accordingly answered in favour of the workman.

13. In view of the determination of the issues in the manner aforesaid, the following Award is passed :

#### AWARD

The application of the workman under Section 2-A(2) of the I. D. Act, 1947 is allowed on contest. The action of the management in dismissing Shri Tapan Pradhan, Peon from M/s Kenjhiriapali Service Co-operative Society Ltd., At/P.O. Kenjhiriapali, P.S. Birmaharajpur, Dist. Subarnapur under Order No. 1, dated the 19th August 2011 is held to be illegal and unjustified. The management is directed to reinstate the workman Shri Pradhan in service within one month of publication of the Award. The management is further directed to pay full back wages to the workman from the date of his termination, i.e. the 19th August 2011 till he is reinstated in service within the aforesaid period failing which the arrear back wages shall carry interest @ 12% per annum till full realisation.

Dictated and corrected by me.

SRIKANTA MISHRA  
30-1-2014  
Presiding Officer  
Labour Court, Sambalpur.

SRIKANTA MISHRA  
30-1-2014  
Presiding Officer  
Labour Court, Sambalpur.

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By order of the Governor  
R. K. NANDA  
Under-Secretary to Government